(4)

No. 94-1638

Supreme Court, U.S.
FILED
MAY 15 1995
CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

JESSIE SHIOW-JIUAN HO

Petitioner

vs.

THE STATE BAR OF CALIFORNIA

Respondent

REPLY TO BRIEF IN OPPOSITION

JESSIE SHIOW-JIUN HO
111 North Market Street, Suite 707
San Jose, Ca. 95113

1-408-279-1093

Petitioner Attorney *Pro Se*

27PP

Table of Contents

I. The Admitted Lack of Disclosure of the $1,517.70 demanded for the Salaries and Benefits of the Investigators, prosecutors, and co-employee judges Should Void the Stipulation 5

II. The Lack of Recusal Remedy Concerning Justices of a State Supreme Court Implicates the Due Process Clause 13

Conclusion.....17

Table of Authorities

Cases

Aetna Life Insurance Company v. La Voie 475 U.S.....15
813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988)
Armstrong v. Manzo 380 U.S. 545, 552, 85 S. Ct. 1187...17
1191, 14 L. Ed. 2d. 62 (1965)
Flangas v. State Bar of Nevada 655 F. 2d. 947, 950 14
(Ninth Cir. 1981)
Kaufman v. Court of Appeals 31 Cal. 3d. 933, 939-40.....15
(1982)
Lebbos v. State Bar of California 53 Cal. 3d. 37, 278.....16
Cal. Rptr. 845, 806 P. 2d. 317 (1991), ft.1, certiorari
denied 112 S. Ct. 352, 116 L. Ed. 2d. 291 (1991).
Mathews v. Eldridge 424 U.S. 319, 333, 85 S. Ct. 893, ...17
902, 47 L. Ed. 2d. 18 (1976)
Partington v. Gedan (Partington I) 880 F.2d. 116.....14
(Ninth Cir. 1989), cert. denied,____U.S.____, 110 S. Ct.
3302, 111 L. Ed.2d. 810 (1990), and cert. granted and vacated
on other grounds, ___U.S.___, 110 S. Ct. 3265, 111 L. Ed.2d.
776 (1990)
Shaw v. Garrison 467 F. 2d. 113 (Fifth Cir.1972)..... 11
cert. denied 409 U.S. 1024, 93 S. Ct. 467, 34 L.Ed.
2d. 317 (1972)

California Constitution

Article 6, section 12.....15
Article 6, section 18.....15

California Business and Professions Code

Section 6086.5.....4
Section 6068.10.....4,9

California Rules of Court

Rule 1-100.....15

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

JESSIE SHIOW-JIUN HO

Petitioner

vs.

THE STATE BAR OF CALIFORNIA

Respondent

REPLY TO BRIEF IN OPPOSITION

Petitioner Attorney states, in response to the Brief of Respondent in Opposition to the Petition for a Writ of Certiorari, that the prosecuting party, The State Bar of California, admits it did not disclose it was assessing its employee prosecutor, investigator, and judge's salaries and benefits as claimed " costs" for the stipulation entered without proceeding and that it would impose its salaries and benefits for any further probation proceedings its private court might have. It also admits it did not advise the Petitioner of its claim for its "costs" until after the

period within its State Bar Court had expired to set aside the stipulation. P: 4, RB:14-16. It also admits it changed the law relied on between the time the Petitioner entered into the stipulation, November 16, 1994 and when it transmitted it for approval to the California Supreme Court on January 11, 1995. Petition, which is hereinafter referred to as "P":14-15, Brief for Respondent in Opposition, hereinafter referred to as "RB."

The State Bar admits it does not disclose to attorneys that it imposes its employee judges, investigators, prosecutors' salaries and benefits on the attorney for this and any probation proceedings, that it does not disclose that "costs" means the salaries and benefits of its employee judges, investigators, prosecutors, that it does not disclose that monies payable to it are required in order for an attorney to fulfill the terms of a probation, that it does not disclose the entity approving the stipulation and in charge of overseeing compliance with probation and revoking it is not a Court of law, as represented by the name,"State Bar Court," but is a private program created and run by the private prosecuting party and its employees, that it does

not disclose that the claimed "judge" is not a Judge, but an employee of the State Bar selected, hired, and paid by the prosecuting party who has a financial interest for its party employer in revoking probation so as to retain his $125,000 a year job and obtain from the attorney monies for his salary and benefits and that of his co-employee prosecutors, investigators, judges, and probation personnel, and additional funds to finance other programs for his party employer, that the probation and its revocation is overseen by another employee of the prosecuting party who has a financial interest in revoking probation so as to obtain monies for his employer to finance or recoup his salaries and benefits and that of his co-employee prosecutors, investigators, judges, and that the entity overseeing probation and its revocation has no rules of a Court of law, no rules of procedure, no law, but operates on private rules written by the private prosecuting party which owns it and which are for its exclusive financial and partisan benefit.

A survey by the American Bar Association indicates no State permits collection of salaries and benefits as "costs," except California's private and partisan State Bar licensing system.

As stated by the State Bar, "the State Bar has statutory authority to prosecute attorney disciplinary proceedings." RB: 20. The employees of the prosecuting party run and own a private court to obtain monies for themselves at the expense of each accused. Appendix B-1, B-2. California Business and Professions Code sections 6086.5, 6086.10(b)(3). The accuseds are the class of compelled attorney members who are prohibited from participation and who already paid, by way of mandatory dues, for a discipline system. But the employees "double dip." They collect the mandatory dues and then use them for other than discipline and then collect additional funds by finding all accuseds guilty and claim "costs" are their salaries and benefits, perks, and extras, but which are never disclosed to an accused. Appendix A.

Because it is unrefuted that the State Bar has obtained over fourteen million dollars for itself from the takings of 3,091 attorney's licenses in less than four and a half years, P:8, it may claim those sums are less than one percent of annual revenues, but those claims have been discredited because the State Bar refuses to be audited, has no C.P.A., and tallies only one part of unpaid assessments, not all of the paid assessments, such that the

legislature has pending legislation to require a certified public audit of the State Bar's finances which they have refused to disclose or comply with. P:8, RB: 198, ft. 9.

I.

The Admitted lack of Disclosure of the $1,517.70 demanded for the Salaries and Benefits of the investigators, prosecutors, and co-employee judges Should Void the Stipulation

While the State Bar asserts the judgment approving a stipulation followed disciplinary proceedings within its State Bar Court, RB:1, it is undeniable there were no proceedings. The Petitioner was induced by non-disclosure privately by the prosecutor and his co-employee investigator to enter into a stipulation with the threat of commencement of proceedings and harsh punishment if she did not agree. No notice ever issued. P: 3. Had the Petitioner been advised of the partisan roles and financial interests of the prosecutor, investigator, and their co-employee judges and probation officers and of their private, partisan, and financially interested State Bar Court, the Petitioner would have foregone entering into the stipulation. She would

have been forewarned that agreeing would subject her to an initial assessment for their salaries and benefits and to probation for two years wherein she would be subject to repetitive proceedings by those desirous of obtaining more and more money from her by finding a defect and surrendering her license for private profit for themselves and their employer .

As the State Bar acknowledges, it had disciplined several other attorneys who became victims of the same fraud ring which preyed on the Petitioner. RB:7, ft. 4. It had done so prior to the Petitioner being victimized. It was the Petitioner's assistance to the District Attorneys of two counties, her appearance before a grand jury, her testimony that resulted in the ringleader being sent to jail for six years. Not only did the State Bar not help the criminal authorities close down this fraud ring, it encouraged its success for several years, because it makes money for itself by making sure the fraud rings prosper, because they can keep getting money for themselves from the victimized attorneys. Not one cent is spent in educating attorneys about these fraud rings. Not one cent is spent in forewarning attorneys about the

prevalence and *modus operandi* of these fraud rings' operations in the State. Not one cent is spent in assisting the criminal authorities in closing down these fraud rings. Not one cent is spent in helping the compelled attorney members avoid these fraud rings. The criminal authorities consider the State Bar covert aiders and abettors to crimes, not persons interested in preventing crimes or aiding law enforcement.

Needless to say, the shock of being victimized with a fast-talking State Bar prosecutor who concealed his secret, financial agenda caused the Petitioner to agree to a guilt she did not have. Not only did she not form or operate a partnership with a non-lawyer or fail to supervise employees or her trust account, no attorney would have been able at an earlier moment than did the Petitioner to learn what was the true intent of the sophisticated fraud ring or to extricate herself faster than did the Petitioner, especially when the State Bar makes sure no attorney is advised of the existence and prevalence of these fraud rings because that is against its financial self-interest. That the Petitioner paid over nine thousand dollars from her private funds to reimburse

everyone over a year before she went to the State Bar indicates that the private, for profit licensing system of the State Bar has a heavy social and monetary cost when those who are supposed to protect the Public and attorneys have the opposite goal in order to financially benefit themselves at the expense of the interests of the Public and the legal profession.

The State Bar of California, a legislatively created entity, represents its employees against the compelled attorney members. They financially benefit themselves when they make sure the compelled members have no help, no assistance, no education, and no where to go for it either. They set up the lawyers for failure and surrender them with a lust for their cash. What distinguishes this State Bar from the fraud ring that victimized the Petitioner?

The State Bar admits the stipulation signed by the Petitioner had no sums of money disclosed. There was no monies demanded. There was no disclosure of any monies to be paid. The only clause in the stipulation stated that, "the agreed disposition is eligible for costs to be awarded to the State Bar.

(Bus. & Prof. Code s. 6086.10 and 6140.7). Petitioner has been notified of his or her duty to pay costs. The amount of costs assessed by the Office of Trial Counsel will be disclosed in a separate cost certificate submitted following approval of this stipulation by a hearing judge. The amount of costs assessed by the State Bar Court will be disclosed in a separate cost certificate submitted upon finalization of this matter." Appendix D-16, Stip, Pg.4, item H1." RB: 4-5.

While the State Bar claims that one of its employee hearing judges "further approved an award of costs to the State Bar pursuant to Business and Professions Code section 6086.10," RB: 5, and claims this was served on the Petitioner, it is undeniable this employee did not award a dollar figure, but as all other attorneys have been misled, put "costs awarded to the State Bar," without disclosure she was giving herself her salary and benefits from the Petitioner of $ 473.00 for putting her name on the stipulation without any proceedings ever conducted as well as the salary and benefits of her co-employee prosecutor and investigators. P:5.

It is irrefutable that the stipulation was signed November 15, 1994, RB:4, allegedly approved by one of the State Bar's employee judges on November 21, 1994, but the State Bar waited until January 11, 1995, after they had changed the law for their private court by barring all rights of accuseds to contest their money demands, Petition, hereinafter "P":14-15, to send to the Petitioner their money demand for $1,517.79 as claimed "costs" and the stipulation for approval by the California Supreme Court. Appendix A.

As Appendix A indicates, the Certificate of Costs mailed January 11, 1995 for the first time advises the Petitioner there are no actual costs, but that the State Bar has awarded itself $1,517.70 anyway. It claims that $348.70 is "other taxable costs." It claims " reasonable costs" are $387.00 for the Office of Investigation, $309.00 for the Office of Trial Counsel, and $473.00 for its Office of State Bar Court. There are no transcript costs and court reporter's fees. There are no taxable costs. There are no deposition costs, service of process, witness costs, court-ordered transcripts, exhibit costs, court-ordered expert

costs. There is not one penny of out-of-pocket expense. No papers were even processed. So what are they assessing for themselves? They are assessing their salaries and benefits and extra funds for their employer. If they do not do this, they are fired. The employee judge is assessing the equivalent of fourteen thousand dollars an hour for her salary and benefits, the prosecutor $473.00 an hour and his co-employee investigator a minimum of $387.00 an hour. Because that is not enough money for them, they threw in an extra $348.70 as "other reasonable costs." Appendix A.

It is irrelevant to the constitutional issues what these funds are being used for. RB:18. They provide a financial incentive for a prosecutor to maintain frivolous prosecutions against innocent attorneys, because if he does not do so and bring in the money, his State Bar employer fires him. These are, in fact, bad faith prosecutions for financial benefit for his private employer and in order to keep his job. See **Shaw v. Garrison** 467 F. 2d. 113 (Fifth Cir. 1972),cert. denied, 409 U.S. 1024, 93 S. Ct. 467, 34 L. Ed. 2d. 317 (1972). His co-employee

investigator knows if he does not misinvestigate the case in order to find guilt and recommend the issuance of charges against an attorney so that the money may be awarded for his employer, he will be fired from his job. Their mutual co-employee judge knows she has been selected, hired, and is paid by the prosecuting party. Her salary alone is a minimum of $125,000 a year paid by the prosecuting party. Although she is appointed by the California Supreme Court for six years to be an employee judge of the prosecuting party's State Bar Court, she will not be reappointed, not assigned cases, not provided any benefits or perks, unless she finds each accused guilty and orders each of them to pay her employer for her salary and benefits and those of her co-employee prosecutors and investigators plus extra funds for other programs. She'll lose her job if she finds an accused innocent of anything, because the attorney may then collect monies from her employer, rather than make money for it. Appendix B-2 .

As long as this financial incentive exists, no accused would agree to a disposition with this State Bar if it were disclosed. So it is concealed until it is too late to set it aside.

II.

The Lack of Recusal Right or Remedy Concerning Justices of a State Supreme Court Implicates the Due Process Clause

The respondent, The State Bar of California, contends no substantial federal question is presented requiring the resolution by this Court. The prospect of 145,000 attorneys summarily disbarred and suspended in order for monies to be obtained from them to finance the salaries and benefits and extracurricular private programs of a privately financed prosecuting party whose highest paid employees ($125,00 each for eight employees and $140,000 for the ninth) are appointed and overseen by the Justices of the only constitutional court available to provide any review for an accused is a substantial federal question of constitutional import.

That 3,091 attorneys have been summarily disbarred or suspended, with all court access summarily denied, with a minimum admitted financial benefit of over fourteen million dollars awarded to and for the party employer of the constitutional court's appointees in less than four and a half years,

poses the federal question that the licensing of attorneys in the largest State in the United States is and has been tainted by partisan role and private profit with the absence of a fair and impartial and neutral adjudicator for over six years. P:8. Appendix A.

The State Bar proffers that an absence of mandatory recusal remedy to disqualify State Supreme Court Justices does not pose a due process problem. Brief for Respondent in Opposition, hereinafter referred to as "RB":12. Unlike **Flangas v. State Bar of Nevada** 655 F. 2d. 947, 950 (Ninth Cir. 1981) and **Partington v. Gedan (Partington I)** 880 F.2d. 116 (Ninth Cir. 1989), cert. denied,____U.S.____, 110 S. Ct. 3302, 111 L. Ed.2d. 810 (1990), and cert. granted and vacated on other grounds, ___U.S.___, 110 S. Ct. 3265, 111 L. Ed.2d. 776 (1990), the California Rules of Court have no provisions for recusal of a State Supreme Court Justice. Ca. Rules of Court, Rules 1-100. The California Constitution provides a judge is disqualified only when he is under indictment or an information or has been recommended for removal by the California

Commission on Judicial Performance. Article 6, section 18, Ca. Constitution. A majority of the members of this Commission are chosen by the State Bar and State Supreme Court.

While the California Constitution provides for transfer of cases to a State Court of Appeals or assignment of State Court of Appeals' Justices to sit in place and instead of the Justices of the California Supreme Court, this is discretionary with the California Supreme Court. Article 6, sections 12 and 18, California Constitution, California Rules of Court, Rules 1-100.

The California Supreme Court has held that state judicial disqualification law does not apply to it. Each Justice determines his own bias or prejudice. The only issue, on appeal, is whether proceedings are prejudicially unfair. Since there is no state appeal from the State Supreme Court, there is no right and no remedy. **Kaufman v. Court of Appeals** 31 Cal. 3d. 933, 939-40 (1982). While this Court held in **Aetna Life Insurance Company v. La Voie** 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988) that a subjective test such as that used in California offends due process of law, the California Supreme Court has declined to

adopt, follow, or cite **Aetna, supra.** It applies its subjective test and its state decision to permit it to sit on State Bar cases wherein in disbarring and suspending attorneys, it orders monies paid to recoup the salaries and benefits of its appointees and their co-employees in the State Bar and to fund programs administered by its appointees to the State Bar party. **Lebbos v. State Bar of California** 53 Cal. 3d. 37, 278 Cal. Rptr. 845, 806 P. 2d. 317 (1991), ft.1, cert. den.112 S. Ct. 352, 116 L. Ed. 2d. 291 (1991).

While grounds for recusal of a judge must be pleaded, the fact there are no procedures to file an affidavit, a challenge, a motion to present issues concerning the bias of a State Supreme Court Justice, no rule permitting it, no statute permitting it, and no constitutional provision permitting it except for indictment or recommended removal of a judge, and the state case law states a State Supreme Court Justice is never required to remove himself from a case since there is no state appellate remedy, indicates there is not a means to uphold, enforce, or present this Court's **Aetna, supra**, decision and have the issues presented or heard within the state system or to obtain a ruling prior to final

disposition which would permit a party access to the federal court to hear and determine the bias issue prior to the bias being acted upon and causing a party irreparable harm.

Is not the absence of recusal rule, statute, procedures, constitutional provisions providing for recusal of a State Supreme Court Justice in California a denial of "an opportunity to be heard at a meaningful time and in a meaningful manner," **Mathews v. Eldridge** 424 U.S. 319, 333, 85 S. Ct. 893, 902, 47 L. Ed. 2d. 18 (1976) (quoting **Armstrong v. Manzo** 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed. 2d. 62 (1965)?

Conclusion

The Judgment based solely on the consent of the Petitioner to a stipulated disposition to which she had withdrawn her consent prior to its approval by the California Supreme Court should be summarily reversed. The State Bar admits it did not disclose it was requiring the Petitioner to pay $1,517.70 for its employees' salaries and benefits until after the time it had adopted for its private court to set the stipulation aside, and that it employs and pays the judge and the probation personnel, all of

whom would also want their salaries and benefits paid for over two years by the Petitioner being subject to continuous probation proceedings maintained by those financially interested in revoking it. As stated in **Tumey v. Ohio,** 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749 (1927), the prohibition on financially interested adjudicators is founded on the rule of reason that that those who are financially interested "are induced to convict when in justice they should acquit." **Tumey, supra**, p. 527.

For the foregoing, the Petitioner requests the Petition for a Writ of Certiorari be granted.

RESPECTFULLY SUBMITTED,

Dated: May 12, 1995

JESSIE SHIOW-JIUAN HO
Petitioner Attorney *Pro Se*